

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-222279.3

DATE: May 13, 1986

MATTER OF:

Eason & Smith Enterprises, Inc.--Request
for Reconsideration

DIGEST:

Request for reconsideration is denied where the protester restates earlier argument which was considered in prior decision because the protester has failed to specify errors of law made or information not previously considered in our prior decision.

Eason & Smith Enterprises, Inc. (ESEI), requests reconsideration of our decision in Eason & Smith Enterprises, Inc.--Request for Reconsideration, B-222279.2, Apr. 18, 1986, 86-1 C.P.D. ¶ ____, in which we dismissed its protest against the award of a contract to Chemical Waste Management, Inc. (CWM), under invitation for bids (IFB) No. DLA200-86-B-0003 issued by the Defense Reutilization and Marketing Service, Defense Logistics Agency. We deny the request.

In the initial decision, ESEI, the third low bidder, contended that CWM was improperly permitted to correct a mistake in bid and that the second low bidder was nonresponsive because it inserted "N/C" for line items Nos. 0001-0005 and "no charge" for line item No. 0006, instead of a numerical price. We held that ESEI was not an interested party to maintain the protest against CWM because even if we sustained the protest, it would not have been in line for award. ESEI would not have been in line for award because a bid is not required to be rejected as nonresponsive when "no charge" or similar notations are inserted instead of dollar prices because the notations indicate the bidder's affirmative intent to obligate itself to provide the items at no charge to the government. Consequently, on the basis of ESEI's allegations, we did not view the second low bidder's bid as nonresponsive and therefore ESEI was not in line for award.

In its request for reconsideration, ESEI contends that the second low bid was, in fact, nonresponsive because N/C could arguably be interpreted as meaning "not covered",

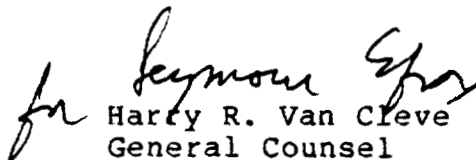
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particularly since no charge was spelled out elsewhere in the bid. We are unpersuaded by this argument because it essentially restates ESEI's argument that the second low bid was nonresponsive for inserting N/C instead of actual pricing. We fully considered the argument in our earlier decision.

Therefore, we find that ESEI has failed to specify any errors of law made or information not previously considered in our prior decision to warrant review of its request for reconsideration. 4 C.F.R. § 21.12(a) (1985). In light of this, we affirm our prior decision.

By letter dated May 1, 1986, ESEI supplemented its request for reconsideration alleging that the second low bidder also was nonresponsive. We will not consider this argument because it is untimely. Additional arguments filed in connection with a pending protest, which raise new issues, as here, must independently satisfy our timeliness regulations. Baker Company, Inc., B-216220, Mar. 1, 1985, 85-1 C.P.D. ¶ 254. Our regulations state that protests shall be filed not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. ESEI should have known about the alleged nonresponsibility of the second low bidder when it initially filed the protest on March 14, 1986. In any event, it is our policy not to consider a protest challenging an affirmative responsibility determination unless there is a showing either that the determination may have been made fraudulently or in bad faith by contracting officials, or that definitive responsibility criteria in the solicitation may not have been met. 4 C.F.R. § 21.3(f).

The request for reconsideration is denied.

for 
Harry R. Van Cleave
General Counsel